Supreme Court, U.S.
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No. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

SNAP-TITE, INC.,

*Petitioner,*

vs.

NATIONAL COUPLING COMPANY, INC.,

*Respondent.*

**On Petition to the United States Court of Appeals for the Federal Circuit**

## PETITION FOR WRIT OF CERTIORARI

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52pp

## QUESTIONS PRESENTED

1. Does a patent expire pursuant to 35 U.S.C. §41(b) if a small entity maintenance fee was paid when a large entity fee was admittedly due?

2. May a patentee incorrectly pay maintenance fees at small entity rates when admittedly not entitled to do so and later, during litigation of the patent and after the grace period and without petitioning the Commissioner to accept the delayed payment of a maintenance fee, pay the difference between the large and small entity rates?

3. Is 37 C.F.R. §1.28(c) a maintenance fee payment rule?

4. Does 37 C.F.R. §1.28(c) permit payment of maintenance fees at any time?

## PARTIES TO THE PROCEEDING

The Petitioner is Snap-Tite, Inc. ("Snap-Tite"), a Pennsylvania corporation having its principal place of business at 201 Titusville Road, Union City, Pennsylvania 16438. Petitioner is the defendant-appellant below.

The Respondent is National Coupling Company ("National"), a Texas corporation having its principal place of business at 1316 Staffordshire Road, Stafford, Texas 77477. Respondent is the Plaintiff/Cross-Appellant below.

## RULE 29.1 STATEMENT

Petitioner Snap-Tite, Inc. is a Pennsylvania corporation.

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No. _____

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1994

SNAP-TITE, INC.,

*Petitioner,*

VS.

NATIONAL COUPLING COMPANY, INC.,

*Respondent.*

**On Petition to the United States Court of Appeals for the Federal Circuit**

## PETITION FOR WRIT OF CERTIORARI

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States.

Your Petitioner, Snap-Tite, Inc., respectfully prays that a Writ of Certiorari issue to review the order of the United States Court of Appeals for the Federal Circuit entered June 10, 1994 and the order denying the petition for rehearing and the suggestion for rehearing en banc entered July 28, 1994.

## CITATIONS TO OPINIONS BELOW

The judgment of the United States Court of Appeals for the Federal Circuit entered June 10, 1994 is printed in the Appendix to this Petition at pages A1. The order of the United States Court of Appeals for the Federal Circuit denying the petition for rehearing and the suggestions for rehearing en banc is printed in the Appendix page A2.

The decision of the United States District Court for the Southern District of Texas is reprinted in the Appendix at pages A3-A4. The transcript of trial proceedings, (March 4, 1993), in the United States District Court for the Southern District of Texas, Houston Division wherin the District Court held the'859 patent valid (not expired) is reprinted in the Appendix at page A5.

## JURISDICTION

The Judgment of the United States Court of Appeals for the Federal Circuit was entered June 10, 1994 and the petition for rehearing and suggestion for rehearing en banc was denied July 28, 1994.

Jurisdiction of this court is invoked under the provisions of 28 U.S.C. §1254(1).

## JURISDICTION BELOW

Jurisdiction in the District Court was based on 28 U.S.C. §1338(a). Appellate jurisdiction in the United States Court of Appeals for the Federal Circuit was based upon 28 U.S.C. §1295.

## STATUTE INVOLVED

The federal statute involved and to be considered is 35 U.S.C. §41(b) (1992):

> (b)... Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period.

## STATEMENT UNDER SUPREME COURT RULE 29(.4)(B)

In this case the constitutionality of an Act of Congress has not been questioned.

## STATEMENT OF THE CASE

National sued Snap-Tite and Cooper Industries, Inc. (hereinafter "Cooper") on November 14, 1990 alleging infringement of all claims of each of three United States Patents. Those patents are: U.S. Patent Nos. 4,694,859 (the "'859" patent) issued on September 22, 1987; 4,574,780 (the "'780" patent) issued on July 5, 1988; and 4,832,080 (the "'080" patent) issued on May 23, 1989. Snap-Tite counterclaimed for an adjudication of patent invalidity for all three patents. The three patents, as issued, are directed toward undersea hydraulic couplings.

Cooper was dismissed from the lawsuit. On February 20, 1991, National and Cooper entered into a license agreement and a settlement agreement and exchange of releases resulting in a dismissal of Cooper, without prejudice. Cooper, employing 53,900 people, is a large entity pursuant to federal law.

National admittedly licensed Cooper, a large entity employing 53,900 people, on February 20, 1991 in exchange for a payment of money. National however, subsequent to the February 20, 1991 license, paid small entity maintenance fees for the '859 on March 13, 1991 and for the '780 on December 31, 1991. The United States District Court for the Southern District of Texas, Houston Division found the '859 patent not invalid (not expired).[1] The District Court determined several Snap-Tite couplings infringed the '859 patent, App. A3.

Snap-Tite sought a determination that the '859 patent had expired because an expired patent cannot be infringed. National admitted noninfringement of the '780 patent but nonetheless Snap-Tite sought a declaration of invalidity of the '780 at trial. The District Court effectively dismissed the '780 patent at trial due to National's admission of non-infringement and refused to hear testimony in regard to its invalidity. The United States Court of Appeals for the Federal Circuit affirmed the decision without opinion.

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[1] App. A5.

National, at trial, offered documents into evidence dated March 1, 1993, entitled: "SUBMISSION OF MAINTENANCE FEES TO CURE DEFICIENCY AND VERIFIED STATEMENT IN SUPPORT" for the '859, '780 and '080 patents.[2] National's "submissions" under 37 C.F.R. § 1.28(c) (1982) are deficient on their face and are in contravention of 35 U.S.C. §§ 41(b), (1992), 37 C.F.R. § 1.378 (1993)[3] , and 37 C.F.R. § 1.366 (1984)[4] , in that said patents have expired.

## SUMMARY OF THE ARGUMENT

The '859 and '780 patent have expired as a matter of law. National has admitted that small entity status was incorrectly claimed and the incorrect maintenance fee was paid. The pertinent portion of 35 U.S.C. §41(b) (1992) states:

> **(b)... Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period.**

The statute is clear, and as such, the '859 and '780 patents have expired.

## ARGUMENT FOR GRANTING RELIEF

I. The '859 patent expired pursuant to 35 U.S.C. §41(c) when a small entity maintenance fee was paid when a large entity fee was admittedly due.

The portion of 35 U.S.C. §41 quoted above was originally enacted by legislation entitled: Patent and Trademark Laws, Pub. L. 96-517, §41, 94 Stat. 3017 (1980). App. A10. The language of the statute is mandatory, to wit, a patent expires

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[2] App. A6-9.

[3] App. A20-21.

[4] App. A18-19.

unless payment of the maintenance fee is received when due or within the six month grace period after the due date.

The pertinent portion of 37 C.F.R. §1.362(g) (1984) states:

> **Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.**

The pertinent portion of 37 C.F.R. §1.366(b) (1984) states:

> **Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account may be submitted within the periods set forth in 37 C.F.R. 1.362(d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to 37 C.F.R. 1.378...Payment of less than the required amount.... will not constitute payment of a maintenance fee or surcharge on a patent.**

Any payment of a maintenance fee after 4, 8 or 12 years will not be accepted and will not serve as payment of the maintenance fee unless the Commissioner so accepts the payment on a petition pursuant to 37 CFR §1.378 (1993).[5] National admittedly did not petition the Commissioner to accept delayed payment of a maintenance fee in an expired patent to reinstate

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[5] App. A20.

the patent pursuant to 37 C.F.R. §1.378.[6] Additionally, 37 C.F.R. §1.366(b)(1984) requires full payment of the required amount of the maintenance fee to prevent expiration. Patent fees are payable in advance. 37 C.F.R. §1.22 (1983).[7]

National maintained below that 37 C.F.R. §1.28 permits payment of the amount due (of a maintenance fee) after the 4, 8, or 12 year periods. National incorrectly argued below that 37 C.F.R. §1.28 (1992) implemented 35 U.S.C. §41(h)(1992). Subsection "(h)" was added to the statute by legislation entitled: Patents and Trademark Office: Authorization and Amendments, Pub. L. 99-607, §1(b)(2), 100 Stat. 3470 (1986). 37 C.F.R. §1.28(c) was promulgated in 1982, four years *before* subsection "(h)" was added to 35 U.S.C. §41. Pub. L. 99-607, November 6, 1986, amended section 41 of Title 35, United States Code, to include subsection "(h)" and provide the PTO with explicit legal authority to continue lower fee rates for independent inventors, nonprofit organizations and small businesses.

Pub. L. 97-247 (Aug. 27, 1982), appropriated money for PTO operations for fiscal years 1983, 1984 and 1985. Pub. L. 97-247 (1982) provided funds to reduce by 50% the payment of fees by independent inventors and small business under 35 U.S.C. §§41 (a) and (b).[8] There was some doubt at the end of fiscal year 1985 whether the PTO had explicit legal authority to continue lower small entity fee rates. Pub. L. 99-607 (1986) provided the PTO with explicit legal authority to continue small entity fees.

Nothing in the legislative or regulatory history permits the construction of 37 C.F.R. §1.28(c) that National has advanced. An analysis of the rulemaking in regard to 37 C.F.R. §1.28(c) follows which illustrates said rule is not a maintenance fee payment rule.

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[6] App. A6-9.

[7] App. A12.

[8] App. A11.

**(A) Rulemaking in 1982**

37 C.F.R. §1.28 (1982) was promulgated pursuant to the authority of legislation entitled: Patent and Trademark Office-Authorizations, Amendments, Schedule of Fees, Pub. L. 97-247, §3, 96 Stat. 317-19. In particular, 37 C.F.R. §1.28(c) has not been altered since its promulgation as a final rule, 47 Fed. Reg. 40140 (col. 2) (1982), *effective date* October 1, 1982.[9] 37 C.F.R. §1.28 was published as a proposed rule in 47 Fed. Reg. 28042, 28061 (col. 2) (1982).[10] The original proposed rule (§1.28(c)) was slightly different in that it proposed verified statements explaining the good faith error in regard to small entity status at any time after the error, not just more than three months after the error.

37 C.F.R. §1.28(b) mandates that "[n]otification of any change in status resulting in loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to §1.9 of this part." Accord, 37 C.F.R. §1.366(f).[11] "This means that only four checks are required during the pendency and term of a patent after initial establishment of small entity status if such establishment was made prior to payment of the issue fee." See, 47 Fed. Reg. 40136 (col. 2) (Sept. 10, 1982).[12]

The notice proposing rule 37 C.F.R. §1.28 states: "The details implementing the payment of maintenance fees are not being proposed at this time," 47 Fed. Reg. 28049 (col. 1) (1982).[13] The notice of the final rule also makes clear that 37 C.F.R. §1.28(c) is directed toward the error of improperly

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[9] App. A27-28.

[10] App. A23.

[11] App. A19.

[12] App. A26.

[13] App. A22.

establishing and benefiting from small entity status. Also, the regulatory history of 37 C.F.R. §1.28(c) indicates that it was promulgated in part to ameliorate the concern of the patent bar in regard to the attendant responsibilities set forth in 37 C.F.R. §1.28(d). See, 47 Fed. Reg. 40136 (col. 2) (1982).[14]

It is the improper establishment and improper continued benefit of status as a small entity that constitutes error as set forth in 37 C.F.R. §1.28(c), not the improper payment of maintenance fees. The error that is excused by 37 C.F.R. §1.28(c) is the error of establishing and claiming entitlement to status as a small entity when not entitled to claim small entity status. 37 C.F.R. §1.28(c) does not permit nonpayment of, or the untimely payment of, the applicable maintenance fee. Nor does 37 C.F.R. §1.28(c) prevent expiration of a patent due to nonpayment of, or the untimely payment of, the applicable maintenance fee.

The PTO established maintenance fee *amounts* pursuant to legislation entitled: Patent and Trademark Laws, Pub. L. 96-517, §2, 94 Stat. 3017-18, (1980)[15] and Pub. L. 97-247, §3, 96 Stat. 317-19 (1982)[16] . Alternative post-issuance fee amount final rules (to be codified at 37 C.F.R. §1.20) were set forth at 47 Fed. Reg. 33086, 33096 (col. 3) (1982), *effective date* October 1, 1982.[17] The regulatory history indicates the PTO's state of mind in regard to the *payment* of maintenance fees in the fall of 1982 as follows:

> **The details implementing payment of the maintenance fees are not being established at this time since such fees will not be due for some time and additional consideration of the problems thereof is required. 47 Fed. Reg. at 33096 (col. 3) (1982).**

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[14] App. A26.

[15] App. A10.

[16] App. A11.

[17] App. A25.

In fact, the rules implementing payment of maintenance fees were not promulgated until 1984 because the first maintenance fees were not due until early 1985.

**(B) Rulemaking in 1984**

Rules (37 C.F.R. §§1.362-1.378) relating to the payment of maintenance fees were proposed in 1984, 49 Fed. Reg. 17692 (col. 1), et. seq.[18] The "supplementary information" section of the proposed rule states:

> **This proposed rule change is designed primarily to (1) establish a set of rules for the payment of patent maintenance fees; and (2) effect the provisions of Pub. L. 96-517 and 97-247 with respect to payment of maintenance fees.**

In its discussion of the proposed rule to be codified at 37 C.F.R. §1.366, the PTO states at 49 Fed. Reg. 17694 (col. 2)(1984)[19] :

> **Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee.**

Similarly, in promulgating the final rule, 37 C.F.R. §1.366, 49 Fed. Reg. 34716, 34718 (col. 2)(1984), the PTO reiterated that the entire proper amount due must be paid on the due date.

When 37 C.F.R. §1.28(c) was declared in 1982, the PTO was not yet collecting maintenance fees. The laws (Pub. L. 97-247 (1982) and 96-517 (1980)) authorizing maintenance fees did not require the first payment of maintenance fees until early 1985. See, 49 Fed. Reg. 34722 (col. 3), Aug. 31, 1984 (App. A32). In 1982 the PTO deferred promulgation of the rules implementing payment of maintenance fees since the fees were not due yet and would not be for some time. National's assertion

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[18] App. A29.

[19] App. A30.

that 37 C.F.R. §1.28(c) permits payment of the amount due (of a maintenance fee) after the 4th, 8th and 12th year period is clearly incorrect.

**(C) Dellett's intentional "inadvertence"**

National claims that it exhibited good faith in its "submission" under 37 C.F.R. §1.28(c). Mr. Dellett states in National's "submission" and "verified statement" to the PTO that he "inadvertently failed to notify Computer Patent Annuities" of National's change in status. National had a duty to notify the PTO of a status change under 37 C.F.R. §1.28(b), not Computer Patent Annuities. Dellett's trial testimony indicates that his failure to notify anyone including Computer Patent Annuities of National's change in status was not inadvertent, it was intentional! On cross-examination:

> (1) Dellett testified he didn't know when the maintenance fees were due for the '859 patent;
>
> (2) Dellett testified he believed nonpayment of any maintenance fee would cause the '859 patent to expire;
>
> (3) Dellett testified that the attorneys at his firm, Arnold, White and Durkee are not responsible for the payment of maintenance fees; Dellett testified that he "never" dealt with maintenance fees;
>
> (4) Dellett testified that there was no time limit for correcting status as a small entity and paying the correct maintenance fee under 37 C.F.R. §1.28;

Inadvertence means accidental or unintentional. Dellett couldn't have acted inadvertently because according to his own testimony he and the rest of the attorneys in his firm are not responsible for the payment of maintenance fees. You can not inadvertently fail to act when you do not have a duty to act.

Specifically, Dellett testified on cross-examination:

Q. Do you have the '859 patent in front of you? I believe you do.

A. Yes.

Q. Will you please look at that and tell me when the fee was due?

A. Well, to tell you the truth I don't deal with maintenance fees enough to tell exactly when, but four and a half years after the date of the patent, I believe.

THE COURT: But you all contract with an independent agency to take care of that?

THE WITNESS: Yes, it's not something that the attorneys ever deal with...

Q. When did you know or learn about the license with Cooper Industries?

A. Well, I've learned a lot in the last few hours, believe me, but at the time in 1991, I don't recall if I ever read the entire license, I just don't remember what I knew...

Q. One more question, series of questions. It is the attorney's responsibility to ensure that the proper fee gets paid, is it not?

A. Not Arnold, White and Durkee, we have people whose responsibility it is take care of that...

In view of Dellett's testimony, Dellett's representation to the patent office in regard to "inadvertence" can only be regarded as false. Dellett cannot testify that he had no duty in regard to payment of the '859 patent maintenance fee and simultaneously submit documents to the PTO claiming he "inadvertently" failed to notify Computer Patent Annuities of the change of National's status from a small to large entity.

If an "error" occurred as National alleged in its "submission" it certainly could not have been made by Dellett because he had no duty. Further, the duty was not owed to Computer Patent Annuities but rather it was owed to the PTO. See, 37 C.F.R. §§1.28(b)(1982)[20] , 1.366(f)(1984)[21] .

Assuming arguendo, National had admitted during trial that the '859 patent had expired, Dellett's actions were not unintentional as set forth in 37 C.F.R. §1.378. Dellett intentionally did nothing in regard to the '859 patent maintenance fee payment because he had no responsibility to act. At trial, Dellett illustrated total ignorance of the law of maintenance fee payments.

National argued below that the statutes and regulations should be harmonized and read as a whole. When read as a whole, National's suggested application and use of 37 C.F.R. §1.28 is clearly incorrect.

## CONCLUSION

Under the explicit language of the statute and rules, the '859 patent expired 4 years from issue, September 22, 1991, and the '780 patent expired 4 years from issue, July 5, 1992. As such, Snap-Tite has not infringed the '859 patent because an expired patent cannot be infringed. 37 C.F.R. §1.28(c) is not a maintenance fee payment rule which is readily apparent from an examination of the legislative and rulemaking history as set forth above.

## PRAYER

The Petitioner asks that by Writ of Certiorari the decision below of the United States Court of Appeals for the Federal Circuit be reviewed, that the judgment be reversed as contrary to law, and that the '859 and '780 patents specifically be adjudicated as invalid.

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[20] App. A14.

[21] App. A19.

Respectfully Submitted,

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**No. 93-1342, -1372**

**UNITED STATES COURT OF APPEALS**
**FOR THE FEDERAL CIRCUIT**

NATIONAL COUPLING COMPANY, INC.,
*Plaintiff/Cross Appellant,*

v.

SNAP-TITE, INC.,
*Defendant-Appellant.*

**JUDGMENT**

On appeal from the United States District Court, Southern District of Texas in Case No. H-90-3513. This CAUSE having been heard and considered it is ORDERED and ADJUDGED:

Per Curiam (NIES, MICHEL, and CLEVENGER, Circuit Judges):

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

Dated: June 10, 1994 */s/*_____
Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: August 4, 1994

**UNITED STATES COURT OF APPEALS**
**FOR THE FEDERAL CIRCUIT**

ORDER

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the APPELLANT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED.

The mandate of the court will issue on August 4, 1994.

FOR THE COURT,

FRANCIS X. GINDHART, CLERK

Dated: July 28, 1994

By */s/*_____
Diane M. Frye
Chief Deputy Clerk

cc: CHARLES R. RUST
CHARLES S. COTROPIA

NATL COUPLING CO V. SNAP-TITE INC, 93-1342
(DCT - 90-3513

**Civil Action No.**
**H-90-3513**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON TEXAS**

NATIONAL COUPLING COMPANY, INC.,
*Plaintiff,*

v.

SNAP-TITE, INC.,
*Defendant.*

## FINAL JUDGMENT

This cause was tried before the Court sitting without a jury on February 23,-25 and March 2-4, 1993. The Court, having considered the evidence introduced by the parties and arguments presented on their behalf and having made and filed Findings of Fact and Conclusions of Law, hereby

ORDERS, ADJUDGES AND DECREES as follows:

1. Defendant, Snap-Tite, Inc. ("Snap-Tite") has infringed United States Patent Nos. 4,694,859 and 4,832,080 ("the '859 and '080 patents") owned by Plaintiff National Coupling Company, Inc. ("National") by virtue of Snap-Tite's making, using and selling Snap-Tite's 9220, 9370A and 9370B couplings.

2. None of the claims of the '859 and '080 patents have been proven invalid.

3. The '859 and '080 patents are enforceable.

4. National is awarded damages for Snap-Tite's infringing sales occurring prior to February 20, 1991 in the amount of $43,724.00.

5. Snap-Tite's infringement was not willful and therefore the damages are not increased.

6. This was not an "exceptional case" and therefore attorneys' fees are not awarded.

7. National is awarded prejudgment interest on the damages in the amount of $12,655.66. Such interest is calculated by using the rate of 10% (Tex. Rev. Civ. Stat. art. 5069-1.05 2 (Vernon Supp. 1986)), applied to $43,724.00 and compounded annually from June 1, 1990, an approximate median date of the infringing sales, until April 8, 1993, the anticipated date of entry of this Judgment.

8. National is awarded its costs.

9. National is awarded post-judgment interest on the sum of the damages, prejudgment interest and National's costs at the rate of 3.21% compounded annually from the date of this Judgment until the Judgment is satisfied.

10. Defendant Snap-Tite, its officers, agents, servants, employees, successors and assigns, and those companies parent and subsidiary to, or affiliated with, and all persons or companies in active concert or participation with Snap-Tite that receive notice hereof, are hereby enjoined from the unauthorized making, using or selling in the United States of the Snap-Tite 9220, 9370A and 9370B couplings, and any other couplings which are no more than colorably different from one or more of such couplings, from the date of entry of this Final Judgment and until the respective expiration dates of the '859 and '080 patents.

Signed this 7th day of April, 1993.

*/s/* _____
NORMAN W. BLACK
UNITED STATES DISTRICT JUDGE

Entered April 8, 1994

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

TRANSCRIPT OF PROCEEDINGS, MARCH 4, 1993

THE COURT: I am sure you have put on as good a case as can be put on in this kind of dispute. I can tell you I'm not ready to do findings and conclusions, because frankly the ones that you all submitted are not terribly helpful, far too complicated, but I'll tell you where I'm leaning.

I've heard a pretty good case of infringement, I've heard a pretty weak case of invalidity, and I've heard a very puny case of damages. I haven't heard any bad faith on anybody's part, I haven't heard any fraud on the patent office. I think this issue of whether the proper fee was paid on time is a non-issue. I think Mr. Dellett is correct the way it's being handled, I just don't think it's an issue in the case. That patent [the '859 patent] is valid.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:
Robert E. Smith III

Serial No.: 801,477

Filed: November 25, 1985

For: UNDERSEA HYDRAULIC COUPLING AND METAL SEAL

Group Art Unit: 3407

Examiner: J. Fox

Atty. Dkt. No.: NATT:001/DEL

U.S. Patent No.: 4,694,859

**SUBMISSION OF MAINTENANCE FEES TO CURE DEFICIENCY AND VERIFIED STATEMENT IN SUPPORT**

Box M. Fee
Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. §1.28(c), enclosed is a check in the amount of $415.00 to cure any deficiency between the amount paid on March 13, 1991 and the amount due for maintenance fees for U.S. Patent No. 4,694,859. If the check is not included or this amount is deficient, please charge any fees to Arnold, White & Durkee Deposit Account No. 01-2508/NATT:001/DEL.

Status of assignee National Coupling Company, Inc. as a small entity was established in good faith on June 4, 1987, and maintenance fees as a small entity were paid in good faith on the date noted above.

Assignee National Coupling Company, Inc. entered into a license of certain rights in U.S. Patent No. 4,694,859 on Febru-

ary 20, 1991. The licensee, however, did not qualify as a small business concern under 37 C.F.R. §1.9(d).

The error in failing to notify the Patent Office was made in good faith. Another law firm represented assignee National Coupling Company, Inc. in the license. The undersigned attorney inadvertently failed to notify Computer Patent Annuities (the company paying the maintenance fee) of the license and the change in status.

The error was not discovered until on or about February 24, 1993, during a trial of Civil Action No. H-90-3513 in the United States District Court for the Southern District of Texas. Defendant Snap-Tite, Inc., through its attorney, brought the maintenance fee issue to my attention.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

Date: March 1, 1993

*/s/* _____

Stephen D. Dellett
Reg. No. 32,564
Arnold, White and Durkee
Post Office Box 4433
Houston, Texas 77210
(713) 787-1423

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:
Robert E. Smith III

Serial No.: 013,000

Filed: February 10, 1987

For: PRESSURE BALANCED HYDRAULIC COUPLING

Group Art Unit: 3501

Examiner: G. Walton

Atty. Dkt. No.: NATT:003/DEL

U.S. Patent No.: 4,754,780

**SUBMISSION OF MAINTENANCE FEES TO CURE DEFICIENCY AND VERIFIED STATEMENT IN SUPPORT**

Box M. Fee
Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. §1.28(c), enclosed is a check in the amount of $450.00 to cure any deficiency between the amount paid on December 31, 1991 and the amount due for maintenance fees for U.S. Patent No. 4,754,780. If the check is not included or this amount is deficient, please charge any fees to Arnold, White & Durkee Deposit Account No. 01-2508/NATT:003/DEL.

Status of assignee National Coupling Company, Inc. as a small entity was established in good faith on January 22, 1988, and maintenance fees as a small entity were paid in good faith on the date noted above.

Assignee National Coupling Company, Inc. entered into a license of certain rights in U.S. Patent No. 4,754,780 on Febru-

ary 20, 1991. The licensee, however, did not qualify as a small business concern under 37 C.F.R. 1.9(d).

The error in failing to notify the Patent Office was made in good faith. Another law firm represented assigned National Coupling Company, Inc. in the license. The undersigned attorney inadvertently failed to notify Computer Patent Annuities (the company paying the maintenance fee) of the license and the change in status.

The error was not discovered until on or about February 24, 1993, during a trial of Civil Action No. H-90-3513 in the United States District Court for the Southern District of Texas. Defendant Snap-Tite, Inc., through its attorney, brought the maintenance fee issue to my attention.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully submitted,

Date: March 1, 1993

*/s/* _____

Stephen D. Dellett
Reg. No. 32,564
Arnold, White & Durkee
Post Office Box 4433
Houston, Texas 77210
(713) 787-1423

**PUBLIC LAW 97-517 [H.R. 6933]; December 12, 1980**

**41. Patent Fees**

"(c) by the fifteenth fiscal year following the date of enactment of this Act, fees for maintaining patents in force will recover 25 per centum of the estimated cost to the Office, for the year in which such maintenance fees are received, ~~of the~~ actual processing all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment. Fees for maintaining a patent in force will be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent. Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee.

(b) Section 41(b) of title 35, United States Code, is amended to read as follows:

"(b) The Commissioner shall charge the following fees for maintaining a patent in force:

"1. Three years and six months after grant, $400.

"2. Seven years and six months after grant, $800.

"3. Eleven years and six months after grant, $1,200.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.".

(c) Section 41(c) of title 35, United States Code, is amended to read as follows:

"(c)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

## 37 C.F.R. §1.22 FEES PAYABLE IN ADVANCE.

(a) Patent and trademark fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at the time of requesting any action by the Office for which a fee or charge is payable with the exception that under §1.53 applications for patent may be assigned a filing date without payment of the basic filing fee.

(b) All patent and trademark fees paid to the Patent and Trademark Office should be itemized in each individual application, patent or other proceeding in such a manner that it is clear for which purpose the fees are paid.

**37 C.F.R. §1.28**

## EFFECT ON FEES OF FAILURE TO ESTABLISH STATUS, OR CHANGE STATUS, AS A SMALL ENTITY

(a) The failure to establish status as a small entity (§§1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying any fee precludes payment of the fee in the amount established for small entities. A refund pursuant to §1.26 of this part, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if a verified statement under §1.27 and a request for a refund of the excess amount are filed within two months of the date of the timely payment of the full fee. The two-month time period is not extendable under §1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, or within two months of the date of payment of, the fee. Status as a small entity must be specifically established by a verified statement filed in each application or patent in which the status is available and desired, except those applications filed under §1.60 or §1.62 of this part where the status as a small entity has been established in a parent application and is still proper. Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further verified statement pursuant to §1.27 of this part unless the Office is notified of a change in status. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established, except those filed under §1.60 or §1.62 of this part. Applications filed under §1.60 or §1.62 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired.

(b) Once status as a small entity has been established in an application or patent, fees as a small entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due. Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to §1.9 of this part. The notification of change in status may be signed by the applicant, any person authorized to sign on behalf of the assignee, or any attorney or agent of record or acting in a representative capacity pursuant to §1.34(a) of this part.

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Patent and Trademark Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused (1) if any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or (2) if any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a verified statement explaining how the error in good faith occurred and how and when it was discovered. The statement must be a verified statement if made by a person not registered to practice before the Patent and Trademark Office. The deficiency is based on the amount of the fee, for other than a small entity, in effect at the time the deficiency is paid in full.

(d) (1) Any attempt to fraudulently

(i) establish status as a small entity or

(ii) pay fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

(2) Improperly and with intent to deceive

(i) establishing status as a small entity, or

(ii) paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office.

## 37 C.F.R. §1.362 TIME FOR PAYMENT OF MAINTENANCE FEES.

(a) Maintenance fees as set forth in §1.20(e) through (g) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for any plant patents or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

(c) The application filing dates for purposes of payment of maintenance fees are as follows:

(1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

(2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.

(3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date.

(4) For a reissue application, the United States filing date of the original non-issue application on which the patent reissued is based.

(5) For an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

(d) Maintenance fees may be paid in patents without surcharge during the period extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(e) Maintenance fees may be paid with the surcharge set forth in §1.20(h) during the perspective grace periods after:

(1) 3 years through 3 years and 6 months -after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee,

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or federal holiday.

(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

## 37 C.F.R. §1.366 SUBMISSION OF MAINTENANCE FEES.

(a) The patentee may pay maintenance fees and any necessary surcharges, or any person or organization may pay maintenance fees and any necessary surcharges on behalf of a patentee. Authorization by the patentee need not be filed in the Patent and Trademark Office to pay maintenance fees and any necessary surcharges on behalf of the patentee.

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in §1.23 or by an authorization to charge a deposit account established pursuant to §1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in §1.362(d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under §1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than set forth in §1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate procedures of either §§1.8 or 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the following:

(1) The patent number, and

(2) The serial number of the United States application for the patent on which the maintenance fee is being paid.

(d) Payments of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3 1/2, 7 1/2 or 11 1/2 year fee, whether small entity status is being changed or claimed, the amount of the maintenance fee and any surcharge being paid, any assigned payor number, the patent issue date and the United States application filing date. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application serial number as required by paragraph (c) of this section and should also include the original patent number, the original patent issue date and the original United States application filing date.

(e) Maintenance fee payments and surcharge payments relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in §1.23 or by an authorization to charge a deposit account. If maintenance fee and surcharge payments for more than one patent are submitted together, they should be submitted on as few sheets as possible with the patent numbers listed in increasing patent number order. If the payment submitted is insufficient to cover the maintenance fees and surcharges for all the listed patents, the payment will be applied in the order patents are listed, beginning at the top of the listing.

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See §1.28(b).

(g) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§1.26 and 1.28(a).

## 37 C.F.R. §1.378
## ACCEPTANCE OF DELAYED PAYMENT OF MAINTENANCE FEE IN EXPIRED PATENT TO REINSTATE PATENT.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by §1.20(i) is paid at a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

(1) The required maintenance fee set forth in §1.20(e)through (g);

(2) The surcharge set forth in §1.20(i)(1); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in §1.362(e) and must include:

(1) The required maintenance fee set forth in §1.20(e)through (g);

(2) The surcharge set forth in §1.20(i)(2); and

(3) A statement that the delay in payment of the maintenance fee was unintentional.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if added by a person not registered to practice before the Patent and Trademark Office.

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in §1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in §1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

The details implementing the payment of maintenance fees are not being proposed at this time.

Section 1.28 Effect on fees of failure to establish status, or change in status, as a small entity.

(a) The failure to establish status as a small entity (§§1.9(f) and 1.27) in any application prior to paying, or at the time of paying, any fee (1) precludes payment of the fee in the amount established for small entities; and (2) precludes a refund pursuant to §1.26 of any portions of fees paid prior to establishing status as a small entity. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, or at the time of paying, the fee. Status as a small entity must be specifically established by a verified statement filed in each application in which the status is available and desired. Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further verified statement pursuant to §1.27 unless changed, but does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established.

(b) Once status as a small entity has been established in an application or patent, notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application or patent prior to paying, or at the time of paying, any fee due after the date on which status as a small entity is no longer appropriate pursuant to §1.9. The payment of any fee in an application or patent as a small entity, once small entity status has been established, shall serve as a representation that such payment as a small entity is proper at the time the payment is made. The notification may be signed by the applicant, any person authorized to sign on behalf of the assignee, or an attorney or agent of record or acting in a representative capacity pursuant to §1.34(a).

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was no notified of a change in status as required by paragraph(b) of this section, the error will be excused if (1) any deficiencies between the amounts paid and the amounts due are promptly paid and (2) the payment of the deficiencies is accompanied by a verified statement explaining how the error in good faith occurred and how and when it was discovered.

(d) Any attempt to fraudulently (1) establish status as a small entity or (2) pay fees as a small entity shall be considered as a fraud practiced or attempted on the Office. Improperly and through gross negligence (1) establishing status as a small entity or (2) paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office. See §§1.56(d) and 1.555.

1.20 Post-issuance fees.

The details implementing payment of the maintenance fees are not being established at this time since such fees will not be due for some time and additional consideration of the problems thereof is required.

The effect of the changes to paragraph (b) of §1.28 is to permit status to be established and then checked only (1) at the payment of the issue fee and (2) at the time of payment of each maintenance fee. This means that only four checks are required during the pendency and term of a patent after initial establishment of small entity status if such establishment was made prior to payment of the issue fee. The last sentence of paragraph (b) has been changed from that proposed by inserting the words "of change in status" after "notification" for clarity.

Paragraph (c) of §1.28 has been changed from that proposed to require a verified statement explaining how the error in good faith occurred only in situations where the error is not corrected within three months of the date on which the error occurred. This change from paragraph (c) as proposed will reduce paperwork and will provide a three-month grace period to correct errors with no explanations required for correction during that three-month period. The change has also been made to alleviate concerns about paragraph (d) of §1.28 which is being adopted as proposed.

**FEDERAL REGISTER / Vol. 47, No. 176 /
Friday, September 10, 1982 / Rules and Regulations 40140**

1.28 Effect on fees of failure to establish status, or change status, as a small entity.

(a) The failure to establish status as a small entity (§§1.9(f) and 1.27 of this part) in any application or patent prior to paying, or at the time of paying, any fee (1) precludes payment of the fee in the amount established for small entities; and (2) precludes a refund pursuant to §1.26 of this part of any portions of fees paid prior to establishing status as a small entity. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, or at the time of paying, the fee. Status as a small entity must be specifically established by a verified statement filed in each application or patent in which the status is available and desired, except those applications filed under §1.60 of this part where the status as a small entity has been established in a parent application and is still proper. Once status as a small entity has been established in an application or patent, the status remains in that application or patent without the filing of a further verified statement pursuant to §1.27 of this part unless the Office is notified of a change in status. Status as a small entity in one application or patent does not affect any other application or patent, including applications or patents which are directly or indirectly dependent upon the application or patent in which the status has been established, except those filed under §1.60 of this part. Applications filed under §1.60 of this part must include a reference to a verified statement in a parent application if status as a small entity is still proper and desired.

(b) Once status as a small entity has been established in an application or patent, fees as a small entity may thereafter be paid in that application or patent without regard to a change in status until the issue fee is due or any maintenance fee is due. Notification of any change in status resulting in loss of entitle-

ment to small entity status must be filed in the application or patent prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate pursuant to §1.9 of this part. The notification of change in status may be signed by the applicant, any person authorized to sign on behalf of the assignee, or an attorney or agent of record or acting in a representative capacity pursuant to §1.34(a) of this part.

(c) If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error or that through error the Office was not notified of a change in status as required by paragraph (b) of this section, the error will be excused (1) if any deficiency between the amount paid and the amount due is paid within three months after the date the error occurred or (2) if any deficiency between the amount paid and the amount due is paid more than three months after the date the error occurred and the payment is accompanied by a verified statement explaining how the error in good faith occurred and how and when it was discovered.

(d)(1) Any attempt to fraudulently (i) establish status as a small entity or (ii) pay fees as a small entity shall be considered as a fraud practiced or attempted on the Office. (2) Improperly and through gross negligence (i) establishing status as a small entity or (ii) paying fees as a small entity shall be considered as a fraud practiced or attempted on the Office. See §§1.56(d) and 1.555 of this part.

**FEDERAL REGISTER / Vol. 49, No. 80 /
Tuesday, April 24, 1984 / Proposed Rules 17692**

DEPARTMENT OF COMMERCE

Proposed Rules for Patent Maintenance Fees

Summary: The Patent and Trademark Office proposes to amend the rules of practice in patent cases. Part 1 of Title 37, Code of Federal Regulations, to provide rules and procedures for the payment of patent maintenance fees. Pub. L. 96-517, enacted on December 12, 1980 and Pub. L. 97-247, enacted on August 27, 1982, provided for the payment of maintenance fees at intervals of 3 1/2, 7 1/2 and 11 1/2 years from the date of grant of the patent for maintaining in force an original patent, a reissue patent of an invention, and under Pub. L. 96-517, a plant patent and reissues thereof. The proposed changes are intended to provide specific rules and procedures which will assist patentees in avoiding the inadvertent expiration of a patent for failure to pay the appropriate maintenance fee.

Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee.

Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee.

**FEDERAL REGISTER / Vol. 49, No. 171 /
Friday, August 31, 1984 / Rules and Regulations 34722**

Implementation of Maintenance Fee Payment Procedures

The Patent and Trademark Office is presently developing its internal working procedures for processing maintenance fee payments and for notifying the public as to the status of maintenance fee payments on particular patents. The first maintenance fees become due early in 1985. In order to be as helpful as possible in informing the public as to the Patent and Trademark Office's current plans it is useful to outline the basic procedures the Patent and Trademark Office intends to adopt to process maintenance fees so that the interrelationship with the rules is understood. These basic procedures are subject to change as experience and circumstances dictate.